

**CRIMINAL APPEAL No.342 OF 1993**

Against the judgment and order  
of sentence dated 13.10.1993  
passed by Sri Anwar Ahmad, the  
3<sup>rd</sup> Additional Sessions Judge,  
Nawadah in Sessions Trial No.  
176/81/71/87

1. JAGESHWAR MISTRY
2. SAHDEO MISTRY, SONS OF SRI SOHAR MISTRY
3. SOHAR MISTRY, SON OF JEHAL MISTRY
4. NARAIN MISTRY
5. MANGRU MISTRY, SONS OF JANKI MISTRY

ALL RESIDENTS OF VILLAGE- BARIARI, P.S. ROH, DISTRICT- NAWADAH  
----- APPELLANTS

Versus

THE STATE OF BIHAR

----- Respondent

For the appellants :- Mr. Alok Kr. Sinha,

For the State :- Mr. S.N. Prasad, A.P.P.

THE HON'BLE JUSTICE SMT. SHEEMA ALI KHAN

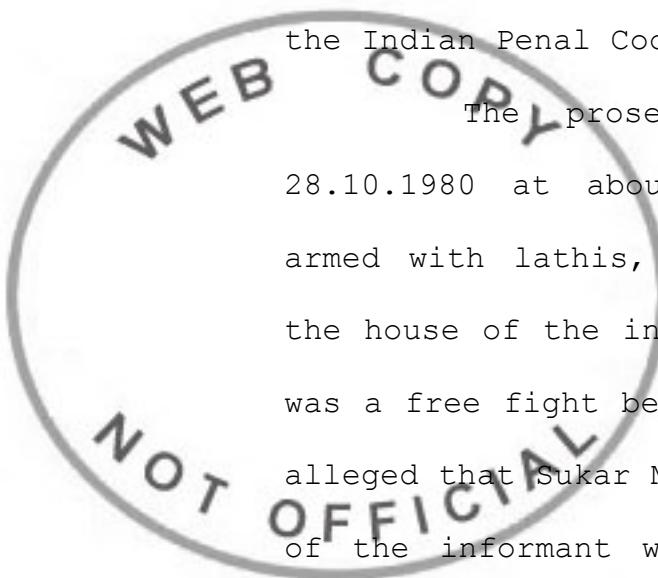
**S.A. Khan, J.**

There are 6 appellants in this case.

Appellant no. 2 died during the pendency of this appeal. Rest of the 5 have challenged the order and judgment passed by 3<sup>rd</sup> Additional Sessions Judge, Nawadah in Sessions Trial No. 176/81/71/87 by which the appellants no. 3, 4, 5 and 6 have been released on probation bonds of Rs. 5000/- with two sureties of the like amount each for a period of two years to appear and receive sentence when called upon during

such period and in the meantime to keep the peace and maintain good behaviour. Appellant no. 1 Jageshwar Mistry has been sentenced to undergo R.I. for five years and to pay a fine of Rs. 1000/- for the offence under Section 326 of the Indian Penal Code and in default of which to undergo R.I. for further period of six months. Appellant no. 1 also sentenced to undergo R.I. for one year for the offence under Sections 148 and 329 of the Indian Penal Code. Appellant no. 2 Sukar Mistry who has died was convicted under Sections 148, 324 and 436 of the Indian Penal Code.

The prosecution case is that on 28.10.1980 at about 11 a.m. the appellants armed with lathis, swords and stones came to the house of the informant Karu Mistry. There was a free fight between the parties and it is alleged that Sukar Mistry set fire to the house of the informant whereas Mangru Mistry threw stones at the informant and others. Jageshwar Mistry assaulted Bhola Mistry with a sword on his left wrist whereas Sahdeo Mistry assaulted Laksho Mistry with a sword on the head and fingers of right hand. Narayan Mistry



assaulted the informant with lathi.

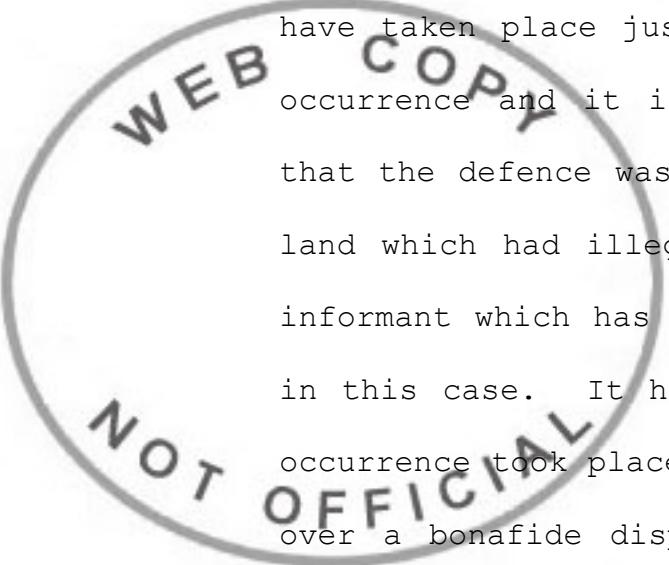
Seven witnesses have been examined in this case. P.Ws. 1 and 2 have been declared hostile. P.W. 2 is the formal witness. The informant Karu Mistry is P.W. 5 whereas P.Ws. 3, 6 and 7 are the injured witnesses.

The injury reports of Laksho Mistry, Karu Mistry and Bhola Mistry are on record. All except Bhola Mistry had received simple injuries. The court has thus released the persons who inflicted injuries on Laksho Mistry, Prayag Mistry and Karu Mistry on probation whereas appellant no. 1 who had inflicted a sword injury on Bhola Mistry P.W. 7, has been convicted under Section 326 of the Indian Penal Code.

At present this Court is only concerned with the evidence of P.W. 7 who was injured by Jageshwar Mistry. It has been pointed out by the learned counsel for the appellants that in the Chief Bhola Mistry has stated that he was given a blow by a sword by appellant no. 1 and due to injury it has become difficult for him to use his thumb. The evidence of P.W. 8 i.e. the doctor indicates

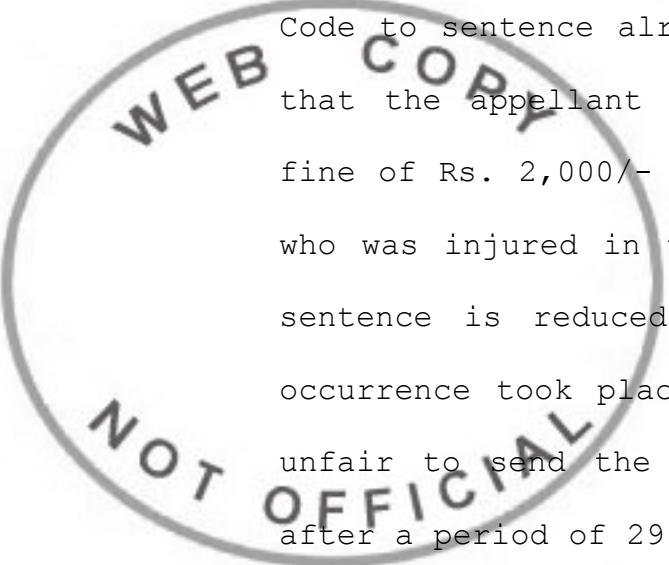
that Bhola Mistry received an incised wound  $5\frac{1}{2}$  x 1" bone deep over left forearm close to wrist joint and root of the thumb caused by sharp cutting weapon, therefore, it appears that there is no discrepancy between the evidence of P.W. 7 and the doctor.

On behalf of the appellants it has been submitted that there is a bonafide land dispute between the parties which has been mentioned in the impugned judgment as well. It is stated that the informant had purchased the plot of land on which the occurrence is said to have taken place just two months prior to the occurrence and it is the case of the defence that the defence was in possession of the said land which had illegally been occupied by the informant which has led to the said occurrence in this case. It has been submitted that the occurrence took place on the spur of the moment over a bonafide dispute and it has been also accepted that the title suit was pending at the time of the occurrence for the said piece of land and as such in a free fight between the parties it cannot be presumed that there was an intention to inflict injuries which may have



resulted in death of any one of the parties.

This Court finds on the basis of the materials on record that the occurrence took place due to a land dispute on the spur of the moment where it has been alleged that the informant had illegally tried to enter the disputed plot, whereas, the prosecution has alleged that the informant was trying to oust them from the hut constructed by the informant's side on the disputed plot and as such this Court alters the sentence passed under Sections 326 and 148 of the Indian Penal Code to sentence already undergone and directs that the appellant Jageshwar Mistry to pay a fine of Rs. 2,000/- to Bhola Mistry the person who was injured in the occurrence. The above sentence is reduced for the reason that the occurrence took place in 1980 and it would be unfair to send the appellant back to custody after a period of 29 years. As far as the case of the appellant nos. 3, 4, 5 and 6 are concerned, the probation period of two years elapsed a long time to go and as such their case is not being considered on merits by this Court.



The fine imposed on appellant no. 1 Jageshwar Mistry should be paid by him within a period of two months from the date of receipt of the notice of the Court below and default in payment will result in further simple imprisonment for a period of three months. The appellant no. 1 is discharged from the liabilities of his bail bond. The appeal is dismissed with aforesaid modification in sentence.

Patna High Court,  
May, 4<sup>th</sup>, 2009  
N.A.F.R./Sanjay

(Sheema Ali Khan, J.)

